

NATIONAL COLLEGE OF DISTRICT ATTORNEYS

Presentation On

“CHILD HOMICIDES: PROSECUTION TECHNIQUES”

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DISCUSSION NOTES AND DETAILED OUTLINE

This outline will provide an overview of the nuances of deaths of children caused by direct acts or omissions by parents, guardians, or caretakers and will focus on investigative, pretrial and trial matters. It will cover a variety of causations which may be involved (sudden infant death, burns, suffocation, beatings). It will also discuss prosecution of child homicides covering involvement in the initial investigation, case preparation, interviewing witnesses, handling medical evidence, jury selection issues, defense issues, and legal and practical obstacles you may encounter. It will offer suggestions for what can be done to anticipate and deal with potential problems before they arise. Finally, it will address trial concerns specifically concentrating on the use of expert testimony, including educating and preparing the jury on the use of expert testimony, jury charge issues, use of Battered Child Syndrome evidence and combating the use by the defense of sympathy/victimology as a justification for the criminal behavior.

OUTLINE OF PRESENTATION

A. Initial Investigation

1. Diagnosis
Unlike most other homicides, the initial investigation rarely begins at a crime scene. Usually, the investigation begins with a medical diagnosis of child abuse and investigators are called to the hospital.
2. Interview Suspects
 - a. It is critical that law enforcement interview the suspects before they learn of the medical diagnosis.
 - b. Suspects should be interviewed separately.

- c. Narrow down who had contact with or cared for the child in the days preceding the child's hospitalization and death. Get specifics on that contact and care.
 - d. Interview everyone who had contact with or cared for the child in the previous week.
 - e. Get detailed information on the child's mental, physical and emotional state during that time frame.
 - f. Get information about the child's health, accidents or injuries from birth.
 - g. Get releases for medical records from the hospital and any doctor or medical facility where the child had been treated.
3. Interview medical personnel
- a. Emergency medical personnel should be interviewed about the condition of the child, crime scene, reactions by persons at the scene and any statements they made. Be alert to information that would qualify the hearsay statements as excited utterance, present sense impression or statements made for medical diagnosis.
 - b. Nurses and social workers at the hospital should be interviewed about the condition of the child, reactions of caretaker adults, explanations given as to the nature and cause of injuries and medical history.
 - c. The treating doctor should be interviewed regarding the child's condition at the time of examination, medical procedures which were done, test results, x-rays and the factors which led to the child's injuries and resulting death. Also, the doctor should be consulted about the plausibility of explanations offered for the child's injuries and time determinations for the injuries found..
 - d. The medical examiner should be interviewed for the specific instrumentation and force required to have caused the injuries and death and the plausibility of explanations offered for the injuries.
4. Crime Scene
- a. Photograph the entire home, interior and exterior. Pay special attention to floor surfaces, furniture and any object the family may have indicated as the source of injury. Photograph the contents of wastebaskets, closets, cupboards, blood spatters on walls or floors.
 - b. Make measurements of any relevant items (e.g. the distance from the top of the stairs to the bottom, the height of the bath tub, the distance from the crib to

the floor). If the claim is burning in bathwater, measure the temperature of the hot water heater, the time it may take for the tub to fill, etc.

- c. Secure any physical evidence, objects claimed to have caused injury, bloody clothing or bedding, substances which the child may have ingested.
- d. Diagram the home, indicating size of rooms, distances, and placement of furniture.

5. Medical Records

- a. Hospital records for the treatment of the fatal injuries
 - 1. x-rays
 - 2. toxicology screenings
 - 3. photographs of injuries
 - b. Prenatal and birth records
 - c. Pediatric records
 - d. Other health care agencies
 - e. Emergency medical records
 - f. 911 tapes
 - g. Medical records for siblings
6. Interview other witnesses
- a. Neighbors
 - b. Other relatives
 - c. School or day care personnel
 - d. Children's protective services personnel
 - e. Babysitters
 - f. Child witnesses, siblings

B. Nuances of Child Homicide Cases

- 1. People do not want to believe adults kill children
 - a. especially parents or caretakers
 - b. especially women
- 2. Lack of injuries indicating homicide
- 3. Victim is rarely left at the scene of the crime
 - a. No control of crime scene
 - b. Often scene investigation is nonexistent
- 4. Diagnosis of child abuse often involves many medical specialties and experts.

C. Pretrial Issues

- 1. Charging decisions
- 2. Intentional homicide
- 3. Negligent homicide
- 4. Acts vs. Omissions
- 5. Defendant's legal duty

6. Charging the non-offending parent
 - a. Can you prove the case without them?
 - b. What kind of witness will he/she make?
 - c. Will the defense be that he/she really did it?
7. Granting the non-offending parent immunity

D. Jury Selection Issues

1. Have children of their own.
2. Experience with children or child development
3. Experience in medical field, doctors, nurses, EMTs
4. Experience with death of a child
5. Feelings about child discipline, punishment
6. Experience with domestic violence, child abuse
7. Experience with children's protective services
8. Experience with groups involved with child abuse/death
9. Experience with law enforcement/prosecutors
10. Experience with anyone charged with or a victim of child abuse.
11. Experience using medical professionals/experts

E. Consultation With Medical Experts

1. Emergency room doctors
2. Radiologists
3. Pathologists, medical examiner
4. Pediatricians
5. Ophthalmologists
6. Toxicologists
7. Battered Child Syndrome
- 8.

F. Visual Trial Exhibits If the jury can't see it, they can't feel it and can't believe it happened.

1. Photographs or Slides
2. Dolls
3. X-rays
4. Child's clothing, bedding
5. Defendant's clothing
6. Medical illustrations
7. Drawing of the scene, with measurements
8. Demonstration or reconstruction of the infliction of injuries.
9. 911 tape with transcription if necessary
10. Charts showing all injuries or inconsistencies in defendant's explanations.

11. Instrumentality of injuries, if known.

G. Defendant's History

1. With children
 - a. the victim
 - b. other children
 - c. Knowledge of children and child development
 - d. Knowledge of life saving techniques
2. Prior domestic violence information
3. Sources
 - a. police reports
 - b. past relationships
 - c. other court record (e.g. divorce)
 - d. child welfare agency records
 - e. family

H. Trial Issues

1. Background of relationships between the parties
 - a. relationship between parents of the child
 - b. problems with the child or children
 - c. defendant's attitude toward the child
2. Circumstances leading up to the death
3. Defendant's mental state
4. Possible motives for the homicide
5. Research and preparation for the defense expert
6. Medical certainty regarding the injuries and cause of death.
7. Keep the medical part simple.

I. Marital Privilege

1. Requires a formalized marital relationship
2. Does not apply to communications before or after marriage
3. Does not apply to acts done in front of the spouse
4. Does not apply to communications in front of third parties capable of understanding.
5. Only the parties can invoke and only the witness spouse has the privilege to testify adversely.

J. Preparing for the Defense

1. Someone else did it
 - a. Use medical testimony to establish time frame

- b. Use other witness testimony to establish time frame
- c. Narrow who had access to the child during that time
- d. Use relationship information.
- e. Use defendant's past history
- 2. Injury was an accident
 - a. Use medical testimony to negate accident
 - b. Use differing statements of defendant as to causation
 - c. Use defendant's post-crime behavior
 - d. Use any medical training defendant may have
 - e. Use any child development knowledge defendant had
 - f. Use relationship history
 - g. Use defendant's past history
- 3. Prepare for the defense expert
 - a. Obtain vita and any publications
 - b. Discuss the defense expert with your experts.
 - c. Be familiar with medical evidence and terminology.
 - d. Interview defense expert and take your expert.
 - e. Have your expert present when theirs testifies.
 - f. Contact other prosecutors for prior testimony.
 - g. Obtain their publications and read for impeachment

K. Jury Charge issues

- 1. Delay
- 2. Multiple injuries
- 3. Circumstantial Evidence
- 4. Consciousness of guilt
- 5. Intervening and superceding cause

L. Battered Child Syndrome

- 1. A legally accepted medical syndrome which helps establish that a child's fatal injuries were not accidental and that the fatal injuries were the product of abuse. It is direct evidence of abuse. It helps rebut the common defense that a child's injuries were accidentally inflicted. The leading case is Estelle v. McGuire, 502 U.S. 62, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991).
- 2. May occur at any age, but usually seen in children under three years old.
- 3. May be the result of a single episode of abuse, but more often reflects multiple acts of abuse or a period of abuse.
- 4. Fatal physical findings are typically a head injury with or without a skull fracture.
- 5. Injuries at different stages of healing
- 6. Injuries inflicted by a parent or other caretaker.

7. The extent and severity of fatal and non-fatal injuries sustained by the child do not match the explanations provided by the parent or caretaker.
8. Caretaker's changing explanations of the cause of the injuries.
9. Syndrome establishes the abuse.
10. Establishes that the child did not die by accidental injury.
11. Prior injuries may be relevant to show that the defendant knew or should have known the child was the victim of abuse.

M. Prior Injuries or Deaths

1. Evidence of child's prior injuries or defendant's abuse of the child are relevant to negate accident, mistake, or to demonstrate motive or intent.
2. Evidence of unexplained deaths of defendant's other children may be admissible, even though they may not have been classified as homicide.
3. Requires limiting or clarifying instruction on the jury's proper use of the evidence. Must insure that the jury does not view evidence of prior injuries as propensity evidence or evidence of bad character. Instruction should indicate that evidence is offered to help jury determine if fatal injury was accidentally inflicted or not.
4. Provide proof of link between the defendant and prior injuries.
5. Charge the defendant in separate counts with inflicting past injury.
6. Charge the defendant with neglect for allowing past injuries to be inflicted or child to become abused or neglected while in the defendant's care.

N. Developing Battered Child Syndrome at Trial

1. Establish all child's injuries at death
2. Establish evidence of prior injuries not discovered until death using photos, medical records or lay witnesses.
3. Link the defendant to past and present injuries through the defendant's statements, other caretakers, neighbors or friends or siblings.
4. Use a qualified expert (pediatrician, radiologist or pathologist) to present the syndrome, define it, establish it through hypotesis, give an opinion of if it applies in your case, explain the basis of that opinion verbally and

through demonstratives, and to negate other causes of death.

O. Using Demonstrative Evidence to Establish Battered Child Syndrome

1. Explain carefully or illustrate a lay or expert witness' testimony.
2. Corroborate testimony
3. Establish motive
4. Support and element of the offense.
5. Demonstrate malice, intent, premeditation, or aggravating circumstance.
6. Negate consent, accident or mistake
7. Demonstrate how an event occurred.
8. Establish cause of injury or how it was inflicted.
9. Establish time of injury .